

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

PAT SPARKS, ET AL.,

PLAINTIFFS

v.

Civil Action No: 4:98CV134-B-A

MYUNG KIM, ET AL.,

DEFENDANTS

MEMORANDUM OPINION

The above-styled case is an action brought pursuant to 42 U.S.C. § 1983. The court has before it defendants' motion to dismiss pursuant to FED. R. CIV. P. 12(b) or, alternatively, for summary judgment pursuant to FED. R. CIV. P. 56. In accordance with the provisions of 28 U.S.C. § 636(c), all parties consented to have a United States magistrate judge conduct all proceedings in this case, including an order for entry of a final judgment. Therefore, the undersigned has authority to decide the instant motion.

On November 18, 1991 Will Holmes, an inmate incarcerated at the Mississippi Department of Corrections ("MDOC") facility in Parchman, Mississippi, died in the prison hospital, apparently due to meningitis.¹ Holmes had become ill on November 7, 1991, experiencing pain behind his right eye and a severe headache, for which he was exempted from the inmate labor program. When he was taken to the prison hospital on November 12, 1991, Holmes received cold and pain medication and was sent back to his housing unit. When his symptoms worsened over the next two days, Holmes was given Tylenol and informed that he would be returned to the hospital for additional treatment on November 15. Holmes was transported to the hospital on the 15th, where he received a shot and was again

¹In ruling on a motion for summary judgment, the court shall not make credibility determinations, weigh the evidence or draw from the facts legitimate inferences for the movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 91 L. Ed. 2d 202 (1986). Rather, the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor. *Id.* The facts, as summarized in this memorandum opinion, are drafted in accordance with this holding.

returned to his unit. Holmes' condition continued to deteriorate, and he was again given Tylenol at his unit on November 17. Finally, on the morning of November 18, officers at Holmes' unit became alarmed by his condition and called for an ambulance to transport him back to the prison hospital, where he died that evening.

Holmes' wrongful death beneficiaries and heirs at law brought suit in Sunflower County Circuit Court on November 18, 1993 seeking compensatory and punitive damages for the alleged negligent medical treatment that plaintiff received prior to his death. The plaintiffs were Pat Sparks, the deceased's sister, and Cathy Taylor, suing on behalf of Kimberly Taylor, the wrongful death beneficiary and legal heir of the deceased. As defendants in that suit plaintiffs named doctors Myung Kim, Juan Santos, John Dial, William Tumlinson, three unknown medical doctors, nurses and MDOC officers or employees, MDOC Commissioner Leroy Black and Mississippi State Penitentiary Superintendent Steve Puckett. Defendants Black and Puckett were sued individually and in their official capacities. On August 23, 1994, then Circuit Court Judge Eugene M. Bogen granted all the defendants' motion to dismiss pursuant to MISS. R. CIV. P. 12(b)(6) on the ground that the defendants were cloaked with sovereign immunity under MISS. CODE ANN. § 11-46-9.²

²This statute provides, in part,

(1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:

. . . .

(d) Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused;

. . . .

(m) Of any inmate of any detention center, jail, work house, penal farm, penitentiary or other such institution

MISS. CODE ANN. § 11-46-9 (West Supp. 1998).

On November 13, 1997, the Mississippi Supreme Court affirmed the circuit court's dismissal, albeit on different grounds. *Sparks v. Kim*, 701 So. 2d 1113 (Miss. 1997). Although the court found the defendants were not entitled to statutory immunity as the circuit court had held, it determined that the suit nevertheless was barred by the doctrine of qualified immunity. *Id.* at 1116-17.

On June 26, 1998, plaintiffs filed the instant lawsuit in federal court. As defendants in this case, plaintiffs name the same individuals that were defendants in the state action, except they have omitted Dr. William Tumlinson as a defendant. The plaintiffs are identical in the state court case and the instant case. Defendants now move the court to dismiss this case or, alternatively, for summary judgment on the dual grounds of *res judicata* and expiration of the applicable statute of limitations.

A Rule 12(b)(6) dismissal is not widely favored because it precludes consideration of the merits of plaintiff's claim. *See Moch v. East Baton Rouge Parish School Board*, 548 F.2d 594, 596 n.3 (5th Cir.), *cert. denied*, 434 U.S. 859, 98 S. Ct. 183, 54 L. Ed. 2d 132 (1977). In fact, a court will "bend over backwards to avoid granting a 12(b) motion to dismiss." *Citrano v. Allen Correctional Center*, 891 F. Supp. 312, 315 (W.D. La. 1995) (citation omitted). In this case, defendant also moves the court for summary judgment in his favor; therefore, the court addresses the motion pursuant to FED. R. CIV. P. 56.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." *Matsushita Electric Industries Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986); *Federal Savings and Loan Insurance v. Kralj*, 968 F.2d 500, 503 (5th

Cir. 1992). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 91 L. Ed. 2d 265 (1986). In ruling on a motion for summary judgment, the court shall not make credibility determinations, weigh the evidence or draw from the facts legitimate inferences for the movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 91 L. Ed. 2d 202 (1986). Rather, all justifiable inferences are to be drawn in the non-movant's favor. *Id.*; *Matagorda County v. Russel Law*, 19 F.3d 215, 217 (5th Cir. 1994).

First, the court addresses the issue of *res judicata* and its effect on the instant lawsuit. Defendants' position is that the doctrine applies to bar this action under Mississippi law.³ Mississippi law gives *res judicata* effect to:

'[a]ll issues tried in the prior lawsuit, as well as all matters which should have been litigated and decided in the prior lawsuit,' provided of course that the four identities of *res judicata* are present. They are: (1) identity of the subject matter of the action; (2) identity of the cause of action; (3) identity of the parties to the cause of action; and (4) identity of the quality or character of a person against whom the claim is made.

Riley v. Moreland, 537 So. 2d 1348, 134 (Miss. 1989) (quoting *Dunaway v. W.H. Hopper & Associates, Inc.*, 422 So. 2d 749, 751 (Miss. 1982)). Because both suits arise from the death of the same individual and are predicated upon what is essentially a wrongful death theory, the elements of identity of subject matter and cause of action are established. Clearly the same parties are involved, and there is identity of the quality or character of the defendants. Thus, it appears that the four identities required for application of *res judicata* are present. Indeed, plaintiffs do not contend otherwise.

Instead plaintiffs contend that this court should not apply the doctrine because in the state court action "no decision on the merits was made" on the federal claims presented in this

³Under 28 U.S.C. § 1738, a prior state court judgment is given the same preclusive effect in a subsequent federal court action that it would be given by the courts of the state in which the prior judgment was rendered. See *Migra v. Warren City School Board of Education*, 465 U.S. 75, 84-85 (1984).

action. (PLAINTIFFS' RESPONSE ¶ 2.) The Mississippi Supreme Court has required a decision on the merits of the prior case, and not merely a technical dismissal on jurisdictional grounds, in order to apply the doctrine in a subsequent case because "*res judicata* applies to bar an action where the parties or their privies have previously litigated a legal claim to a final judgment." *Johnson v. Howell*, 592 So. 2d 998, 1002 (Miss. 1991). In the opinion of the plaintiffs, application of the doctrine is inappropriate in this case because the Mississippi Supreme Court's opinion "makes clear that no adjudication of plaintiffs' federal law claims was undertaken." (PLAINTIFFS' RESPONSE ¶ 2.) In support of their position, plaintiffs direct the court's attention to a footnote in the Mississippi Supreme Court's opinion which reads: "This Court's opinion does not, of course, affect whatever federal law remedies a prisoner might have." *Sparks*, 701 So. 2d at 1116 n.4. Plaintiffs also point to Justice McRae's dissent as evidence that the state courts did not address the federal claims. *Id.* at 1119 (McRae, J., dissenting) ("Except in a footnote, the majority does not address Sparks' charges against prison officials.").

The facts of this case as alleged by the plaintiffs are shocking. Plaintiffs clearly allege facts which, if proven, would support a claim of deliberate indifference to the serious medical needs of the decedent. It is with great reluctance, then, that the court is constrained to find that the defendants must prevail on their motion for summary judgment based upon the doctrine of *res judicata*.

"The Latin idiom '*res judicata*' means the thing has been decided. In law, it means the same issue has been decided by a court of competent jurisdiction." *Pray v. Hewitt*, 179 So.2d 842, 844 (Miss. 1965). As a general matter, it is a doctrine of judicial economy and of "protecting litigants from the burden of relitigating an identical issue with the same party or his privy" 18 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 4403 (quoting *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 99 S. Ct. 645, 58 L. Ed. 2d 552

(1979)).⁴ Mississippi courts clearly accept the doctrine as being based upon public policy. *Golden v. Golden*, 151 So. 2d 598, 600 (Miss. 1963). In the words of the Mississippi Supreme Court, “[t]here must be an end to litigation; judgments of courts of competent jurisdiction must be respected; and the law favors the repose of society. Without it litigation would be endless, nothing would be put at rest, and litigants would be subjected to intolerable harassment and vexation.” *Id.* (citations omitted). The doctrine

protects the integrity of the courts and promotes reliance upon judicial pronouncements by requiring that the decisions and findings of the courts be accepted as undeniable legal truths. *Res judicata* furthers the finality of legal disputes and eliminates the time and expense of relitigation by requiring that parties bring all claims arising out of a transaction, or series of connected transactions, in one action. In the federal courts, the doctrine of “*res judicata*”

⁴Wright’s treatise includes a “helpful summary” of the doctrine and its sometimes obtuse terminology.

The rules of *res judicata*, as the term is sometimes sweepingly used, actually comprise two doctrines concerning the preclusive effect of a prior adjudication. The first such doctrine is ‘claim preclusion,’ or true *res judicata*. It treats a judgment, once rendered, as the full measure of relief to be accorded between the same parties on the same ‘claim’ or ‘cause of action.’ When the plaintiff obtains a judgment in his favor, his claim ‘merges’ in the judgment; he may seek no further relief on that claim in a separate action. Conversely, when a judgment is rendered for a defendant, the plaintiff’s claim is extinguished; the judgment then acts as a ‘bar.’ Under these rules of claim preclusion, the effect of a judgment extends to the litigation of all issues relevant to the same claim between the same parties, whether or not raised at trial. The aim of claim preclusion is thus to avoid multiple suits on identical entitlements or obligations between the same parties, accompanied, as they would be, by the redetermination of identical issues of duty and breach.

The second doctrine, collateral estoppel or ‘issue preclusion,’ recognizes that suits addressed to particular claims may present issues relevant to suits on other claims. In order to effectuate the public policy in favor of minimizing redundant litigation, issue preclusion bars the relitigation of issues actually adjudicated, and essential to the judgment, in a prior litigation between the same parties. It is insufficient for the invocation of issue preclusion that some question of fact or law in a later suit was relevant to a prior adjudication between the parties; the contested issue must have been litigated and necessary to the judgment earlier rendered.

18 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 4403 (quoting *Kaspar Wire Works, Inc. v. Leco Engineering and Mach., Inc.*, 575 F.2d 530, 535-36 (5th Cir. 1978)) (ellipses omitted).

arises from the Full Faith and Credit Clause of the United States Constitution.

Pedrina v. Chun, 906 F. Supp. 1377, 1398 (D. Haw. 1995) (citations omitted). As the Mississippi Supreme Court has long recognized, the effect of application of the doctrine of *res judicata* is “the merger of the [subsequent] cause of action into the judgment or as a bar precluding the party from maintaining another action on the same cause of action irrespective of what issues were litigated and determined in the former action” *C. I. T. Corp. v. Turner*, 157 So. 2d 648, 660 (Miss. 1963). As indicated, the doctrine clearly prevents relitigation of issues actually tried in the former lawsuit, as well as issues which should have been litigated in the former lawsuit. *Migra*, 465 U.S. at 84; *Riley*, 537 So. 2d at 1354; *see Estate of Anderson v. Deposit Guaranty National Bank*, 674 So. 2d 1254 (Miss. 1996).

Mississippi courts have concurrent jurisdiction with the federal courts to hear and decide federal constitutional and statutory claims arising under § 1983. *Barrett v. Miller*, 599 So. 2d 559, 564 (Miss. 1992) (citations omitted). “The authority [of the Mississippi courts] to hear and adjudge a claim under § 1983 is available, even though the statute is not specifically cited by name in the complaint,” as indeed it was not in this instance. *Id.* (citations omitted).⁵ Moreover, the state courts “have a duty and an obligation to enforce federally created rights.” *Id.* (citing *Burrell v. Mississippi Tax Commission*, 536 So. 2d 848, 863 (Miss. 1988)). There is little in the record before the court to indicate that the circuit court addressed the plaintiffs’ claims as they related to federal constitutional rights, but it is a fact that “[c]ourts frequently reject by implication arguments urged by parties.” *Clark v. Clark*, 984 F.2d 272, 273 (8th Cir. 1993). “Courts’ opinions typically address explicitly only those contentions they believe are substantial enough to warrant such treatment [and] state courts’ opinions’ failure to mention

⁵Although the plaintiffs did not expressly plead claims pursuant to § 1983 in state court, defendants do point out that the complaint contains allegations of “deliberate indifference,” a term which is associated with the Supreme Court’s eighth amendment jurisprudence. *See* MOTION TO DISMISS OR FOR SUMMARY JUDGMENT, Ex. A ¶ 19.

plaintiff's federal constitutional arguments means only that those courts did not consider the arguments substantial." *Id.* It is clear that the claims asserted here arise from the same circumstances that gave rise to the claims in state court, and, as such, Mississippi law requires that the doctrine of *res judicata* apply since any claims raised in this action could and should have been raised in the earlier action. *Riley*, 537 So. 2d at 1354. "Where one has a choice of more than one theory of recovery for a given wrong, she may not assert them serially in successive actions but must advance all at once on pain of the bar of *res judicata*." *City of Jackson v. Lakeland Lounge of Jackson, Inc.*, 688 So. 2d 742 (Miss. 1996) (quoting *Walton v. Bourgeois*, 512 So. 2d 698, 702 (Miss. 1987)), *cert. denied*, ___ U.S. ___, 118 S. Ct. 625, 139 L. Ed. 2d 606 (1997).

If plaintiffs' counsel was concerned that the state court had not addressed the federal claims, counsel had available the mechanisms of a motion for reconsideration of the circuit court's opinion, a specific appeal of that issue to the Mississippi Supreme Court or a motion for reconsideration of the supreme court decision. However, there is nothing in the record to suggest that plaintiffs moved either court to reconsider their decisions, and the appellate brief to the Mississippi Supreme Court refers to claims of a constitutional nature only in passing.⁶

The plaintiffs in the case at hand have failed to demonstrate that *res judicata* should not bar their claims in this court. As such, it is not necessary for the court to address the defendants' arguments which pertain to the statute of limitations. The court finds that *res judicata* applies, and the defendants are entitled to judgment as a matter of law. As such, the defendants' motion for summary judgment is well taken and should be granted. A separate order in accordance with this opinion will issue this day.

This the 23rd day of November 1998.

⁶As defendants' rebuttal brief points out, plaintiffs do refer to the decedent's eighth amendment rights in the appellate brief, but they make no specific reference to § 1983 before the Supreme Court.

UNITED STATES MAGISTRATE JUDGE

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FINAL JUDGMENT

In accordance with the opinion of the court issued this day, it is hereby,

ORDERED:

That defendant's motion for summary judgment is granted pursuant to FED. R. CIV. P. 56 because the court finds that there exist no genuine issues of material fact and defendants are entitled to judgment as a matter of law under the doctrine of *res judicata*. All costs are taxed to the plaintiffs.

SO ORDERED, this the 23rd day of November 1998.

UNITED STATES MAGISTRATE JUDGE